UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16

Austin, Texas

MTM TRANSIT D/B/A RIDE RIGHT

Employer

and **Case 16-RC-260984**

AMALGAMATED TRANSIT UNION, LOCAL 1091

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner seeks to represent employees who work in four employee classifications at the Employer's 509 Thompson Lane facility in Austin, Texas. The Petitioner seeks to include these employees within the existing unit of transportation and maintenance employees through an *Armour-Globe* self-determination election.

The four classifications the Petitioner seeks to add are road supervisors, shop foremen, facilities foremen, and resolution specialists. There are currently nine employees working in these four classifications: five employees are road supervisors; two are shop foremen; one is the facilities foreman; and one is the resolution specialist.

The Employer objects to this proposal for several reasons. First, the Employer argues that road supervisors, facilities foremen, and shop foremen are supervisors, as defined in Section 2(11) of the Act. Second, the Employer contends that road supervisors, shop foremen, and resolution specialists are confidential employees. Third, the Employer claims the facilities foreman is a manager. Fourth, the Employer argues that the resolution specialist is an office clerical employee and cannot be included in the existing transportation and maintenance unit. Finally, the Employer argues that there is not a community of interest between any of the employees working in these four classifications and those in the existing transportation and maintenance unit.

I find that road supervisors, shop foremen, and facilities foremen should not be excluded from the protections of the Act as supervisors or managers, nor should they should be excluded from the voting unit as confidential employees. Further, I find that these employees share a community of interest with employees working in the existing unit of transportation and maintenance employees.

However, it would be inappropriate to include the resolution specialist in the voting unit as the resolution specialist does not share a sufficient community of interest with the existing unit of

transportation and maintenance employees, and this exclusion would not effectively deny the resolution specialist the opportunity to be represented in collective-bargaining.

Therefore, I am directing a mail ballot election for employees in these three classifications—road supervisors, shop foremen, and facilities foremen—to determine whether they wish to be included in the existing unit of transportation and maintenance employees.

I. OVERVIEW OF OPERATIONS AND BARGAINING HISTORY

MTM Transit d/b/a Ride Right provides paratransit services for Capitol Metro (or CapMetro), Austin's public transit authority, as a contractor. The Employer has two facilities in Austin, the South Base at 509 Thompson Lane—where the employees covered by this petition work—and the North Base at 817 W. Howard Lane. About 300 employees work at the South Base. About 250 of these 300 employees are in the existing transportation and maintenance unit.

MTM Transit took over the CapMetro paratransit contract in October 2018. Before then, MV Transportation had been CapMetro's paratransit provider, and had also operated out of South Base.

Article 1B of the collective bargaining agreement currently in place between the Union and Employer describes the existing unit. According to this article, the Union is:

> The sole representative for collective bargaining of the Employer's Transportation and Maintenance employees..... The bargaining unit does not include any office clerical employees, guards, and supervisors as defined by the National Labor Relations Act. Further, any employee who is designated by the Employer as a confidential or managerial employee, who meets the definition under the NLRA, and who performs duties normally performed by confidential or managerial employees, shall be excluded from the bargaining unit and not covered by this agreement.

II. POSITION OF THE PARTIES

The Employer argues that employees working in all four employee classifications should be excluded from coverage by the Act, and that none of them share a community of interest with the transportation and maintenance unit. The Petitioner makes exactly the opposite claim—that none of these employee categories are excluded, and that all may be part of the existing unit.

The Employer argues that road supervisors are statutory 2(11) supervisors, confidential employees, and do not share a community of interest with the existing unit; that facilities foremen are 2(11) supervisors, managerial employees, and do not share a community of interest; that shop foremen are 2(11) supervisors, confidential employees, and do not share a community of interest; and that resolution specialists are confidential employees, office clerical employees specifically excluded from the existing unit, and do not share a community of interest with the existing unit.

The Petitioner argues that none of these employee classifications can be excluded as 2(11) supervisors, confidential employees, or office clerical employees. Pointing to the factors

mentioned in the Board's *Outline of Law and Procedure in Representation Cases*, the Petitioner argues that all four classifications share a community of interest with the existing unit.

At hearing, both parties expressed a preference for a mail ballot election.

III. LEGAL STANDARDS

A. Supervisors

Supervisory status under Section 2(11) must be established by the party asserting that status, *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-712 (2001). Showing that an individual has the authority to use independent judgment and take or effectively recommend any one of the twelve actions mentioned in Section 2(11)[1] establishes supervisory status.

However, the language of this section must be construed narrowly, since an employee found to be a supervisor is denied the rights protected under the Act. See *St. Francis Medical Center-West*, 323 NLRB 1046, 1047 (1997). A lack of evidence is construed against the party asserting supervisory status, *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003), and conclusory statements without conclusive supporting evidence will not establish supervisory status. *Lynwood Manor*, 350 NLRB 489, 490 (2007); *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

Supervisory status is determined by looking at an individual's duties, and not their job title. *Dole Fresh Vegetables*, 339 NLRB 785 (2003). Nor can the mere issuance of a directive advising employees that they have supervisory authority establish supervisory status if this authority has never been exercised. *Security Guard Service*, 154 NLRB 8 (1965).

A statutory supervisor must exercise independent judgment, rather than judgment of a merely routine or clerical nature. To exercise independent judgment, "an individual must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data." *Oakwood Healthcare, Inc.*, 348 NLRB 686, 692-93 (2006).

A judgment is not independent if "it is dictated or controlled by detailed instructions" or if there is "only one obvious and self-evident choice." Id. at 693. Nor is a judgment independent if it is made based on well-known employee skills or solely with respect to whether the employee is capable of doing the job. See *GS4 Government Solutions*, 363 NLRB No. 113, slip op. at 3 (2016); *KGW-TV*, 329 NLRB 378, 381-382 (1999). See also *The Arc of South Norfolk*, 368 NLRB No. 68, slip op. at 4 (2019). Nor will independent judgment be found if only supported by vague or hypothetical testimony that individuals "play to employee strengths" when selecting one employee over another to perform a particular task, *Cook Inlet Tug & Barge, Inc.*, 362 NLRB 1153 (2015), or if work assignments are made only to equalize workload, see *Shaw, Inc.*, 350 NLRB 354, 354-357 (2007).

[1] Hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, responsibly direct, or adjust grievances of other employees.

Instead, an employee only exercises independent judgment when they "act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data." *Entergy Mississippi, Inc.*, 367 NLRB No. 109, slip op. at 3 (2019), quoting *Oakwood Healthcare*, 348 NLRB at 692-693.

B. Managers

Managerial employees are excluded from the Act's protection by established Board and Supreme Court precedent. See *NLRB v. Yeshiva University*, 444 U.S. 672, 682 (1980); *Ford Motor Co.*, 66 NLRB 1317, 1322 (1946). Managerial employees formulate, determine, and effectuate high-level employer policies, or have discretion in performing their jobs independent of their employer's established policy. See *Republican Co.*, 361 NLRB 93, 95-96 (2014). They "must exercise discretion within, or even independently of, established employer policy and must be aligned with management." *Yeshiva University*, 444 U.S. at 683.

Although the Board has no firm criteria for determining managerial status, an employee will not ordinarily be excluded as managerial unless they take or recommend discretionary actions effectively controlling or implementing employer policy. *Republican Co.*, 361 NLRB at 96. An employee does not become a manager by making some decisions or exercising some judgment within established limits set by higher management, or without the discretion to deviate from established policies. *Case Corp.*, 304 NLRB 939 (1991); *Holly Sugar Corp.*, 193 NLRB 1024, 1026 (1971). The party asserting managerial status bears the burden of proof. *Republican Co.*, 361 NLRB at 96.

C. Confidential Employees

Confidential employees are excluded from membership in bargaining units. The Board uses two tests to determine confidential status.

In the first "labor nexus" test, a confidential employee is one who: 1) shares a confidential relationship with managers who formulate, determine, *and* effectuate management policies in the field of labor relations; and 2) assists and acts in a confidential capacity to these managers. *Waste Management de Puerto Rico*, 339 NLRB 262, 262 fn. 2 (2003).

In the second test, confidential employees are those who have regular access to confidential information concerning anticipated changes that may result from collective bargaining negotiations. *Crest Mark Packing Co.*, 283 NLRB 999, 999 (1987).

D. Appropriate Inclusion of Unrepresented Groups Within an Existing Bargaining Unit

Petitioner seeks a self-determination election to allow previously unrepresented groups of employees to be included in the existing transportation and maintenance unit—generally known

as an *Armour-Globe* election.[2] A self-determination election is the proper way for an incumbent union to add unrepresented employees to its existing unit if the employees the union wishes to be included share a community of interest with unit employees and "constitute an identifiable, distinct segment so as to constitute an appropriate voting group." *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990) (citing *Capital Cities Broadcasting Corp.*, 194 NLRB 1063 (1972)).

Whether a voting group is an "identifiable, distinct segment" is not the same question as whether the voting group constitutes an appropriate unit. *St. Vincent Charity Medical Center,* 357 NLRB 854, 855 (2011) (citing *Warner-Lambert,* 298 NLRB at 995). The "identifiable and distinct" analysis asks merely whether the voting group sought unduly fragments the workforce, or constitutes an arbitrary segment of unrepresented employees. *Capital Cities Broadcasting Corp.*, 194 NLRB at 1063; see also *Dillon Companies, Inc. v. NLRB*, 809 Fed. Appx. 1, 2 (D.C. Cir. 2020) (unpublished opinion).

The traditional community of interest analysis determines whether this identifiable and distinct segment can be added to the existing appropriate unit. This analysis takes place in three steps. *The Boeing Co.*, 368 NLRB No. 67, slip op. at 3 (2019).

First, the proposed unit must share an internal community of interest. There is not a community of interest if the interests shared in the petitioned-for group are too disparate to form a community of interest within the proposed unit. Id. This analysis uses the factors discussed in *PCC Structurals*, 365 NLRB No. 160, slip op. at 13 (2017), examining whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. The Board also considers the bargaining history of the parties. *Buffalo Broadcasting Co.*, 242 NLRB 1105, 1106 fn. 2 (1979).

Second, the interests of the excluded and included employees are compared. This step considers whether excluded employees "have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members." *Boeing*, 368 NLRB No. 67, slip op. at 4, quoting *PCC Structurals*, 365 NLRB No. 67, slip op. at 11. If those distinct interests do not outweigh the similarities, then the unit is inappropriate. *Boeing*, 368 NLRB No. 67, slip op. at 4.

Finally, any guidelines the Board has established for specific industries (like public utilities or retail stores) should be considered. Id.

[2] See *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937); *Armour & Co.*, 40 NLRB 1333 (1942)

IV. ANALYSIS OF RECORD EVIDENCE

A. Road Supervisors

Five employees work as road supervisors at South Base. The Employer contends that they are statutory 2(11) supervisors, confidential employees, and do not share a community of interest with the existing unit. I find that the Employer has not met its burden of proof concerning any of these three arguments. Therefore, road supervisors will be allowed to vote.

At hearing, the Employer contended that road supervisors should be excluded as statutory supervisors because they could discipline drivers, as well as conduct investigations of drivers that could lead to discipline, evaluate employee performance, and remove drivers from service. The Employer also pointed to several secondary indicia of supervisory status, and attempted to distinguish this case from a previous one, *Veolia Transportation Services*, 363 NLRB 98 (2016), in which the Board found that road supervisors were not statutory supervisors.

1. Road Supervisors Are Not Statutory Supervisors

Road supervisors do not have the authority to use independent judgment and issue or effectively recommend discipline. The Employer did not show by the preponderance of the evidence that the coachings road supervisors give to drivers are, or lay a foundation for, disciplinary actions. Furthermore, the evidence does not show that any investigations a road supervisor might conduct, even if using independent judgment, would result in an effective recommendation of discipline.

a. Coachings Issued By Road Supervisors Are Not Discipline

In the course of their job duties, road supervisors issue "coachings" to drivers. Several such coachings were entered into the record. The coachings included guidance about issues such as professionalism, driving speed, stopping for red lights and at crosswalks, coming to complete stops, maintaining following distance, refraining from eating, slowing in construction zones, fatigue, and backing up. As discussed below, the Employer ultimately only claimed that one of these coachings qualified as discipline.

Verbal or written coachings, counselings, and conferences can be disciplinary actions if they are a significant part of a disciplinary process, laying the foundation for future disciplinary actions. *Altercare of Wadsworth Center for Rehabilitation*, 355 NLRB 565, 565 (2010); *Promedica Health Systems*, 343 NLRB 1351, 1351 (2004), enfd. in rel. part 206 Fed.Appx. 405 (6th Cir. 2006), cert. denied 549 U.S. 1338 (2007); *Trover Clinic*, 280 NLRB 6, 16 (1986)).

If there is a progressive discipline system in place, and coachings are not demonstrably a significant part of it, then coachings are not disciplinary actions. *Altercare*, 355 NLRB at 565; *Promedica Health* Systems, 343 NLRB 1351; *Lancaster Fairfield Community Hospital*, 311 NLRB 401, 403-404 (1993). Thus, where a coaching "merely warns an employee of potential performance or behavior problems," but does not affect any term or condition of employment, it is not a disciplinary action. See *Franklin Hospital Medical Center*, 337 NLRB 826, 830 (2002);

Crittenton Hospital, 328 NLRB 879 (1999) (authority to "point out and correct deficiencies in the job performance of other employees does not establish the authority to discipline.").

Investigating and reporting substandard employee performance without recommending further discipline is not supervisory authority. *Springfield Healthcare, Ltd.*, 355 NLRB 937, 944 (2010); *Regal Health and Rehab Center, Inc.*, 354 NLRB 446, 473 (2009); see *Passavant Health Center*, 284 NLRB 887, 889 (1987) (collecting decisions). Thus, employee evaluations that do not recommend discipline or other personnel action are also not exercises of supervisory authority.

Informed by these considerations, the record and the Employer's arguments do not support the Employer's contention that road supervisors are statutory supervisors. The Employer's progressive disciplinary system is described in Article 14 of the Collective Bargaining Agreement. Section A of Article 14 requires the Employer notify the Union within 7 days of the issuance of discipline. Section B describes the first step of the Employer's progressive discipline policy as a "Policy review / documented verbal counseling" followed by a "First Written Warning," a "Second Written Warning," "A Final Warning with possible 1 day suspension," and "Review for Employment with the Company." Periods of twelve months free of discipline result in a "cleared record."

It is not clear from the record whether road supervisor-issued coachings qualify as "verbal coaching and counseling." The Employer's witness, General Manager Ricardo Boulware, initially testified, without qualification, that road supervisor-issued coachings were "verbal coaching and counseling" as understood by Article 14. However, Boulware later acknowledged that most such coachings were not considered discipline.

According to Boulware, the difference between disciplinary and non-disciplinary coachings was the nature of the incident leading to the coaching. However, he did not specify what kinds of events would lead to a coaching being disciplinary, nor did he refer to any list or set of guidelines that would determine this. Boulware identified only one example of a disciplinary coaching involving a client's concern about the operator's driving, which he argued constituted discipline under the collective bargaining agreement. Boulware characterized this coaching as a disciplinary counseling because it cited driver fatigue as the problematic conduct. Boulware also claimed that this coaching was disciplinary because it had resulted in the driver being removed from service. Boulware testified that it was generally known in industry practice that driver fatigue was grounds for removal, and that a coaching which cited fatigue would be considered disciplinary.

Nothing on the face of this particular coaching states that it is a disciplinary counseling, nor indicates that it is in any way different from the other Employee Coaching Reports submitted as the Employer acknowledged were non-disciplinary coachings. Nor did the Employer submit any proof of an industry practice that removing a driver from service, or issuing a counseling due to driver fatigue, was a disciplinary action.

The Employer also argues that coachings issued by road supervisors are disciplinary because Article 14B of the collective bargaining agreement requires the Employer to notify the Union when it issues discipline, and it sometimes notifies the Union when a road supervisor issues

a coaching. According to the Employer, this notification establishes the reality of the discipline. However, the Employer did not show that the collective bargaining agreement requires employee coachings or counselings given by road supervisors to be disciplinary. The collective bargaining agreement does not prohibit the Employer from notifying the Union about non-disciplinary actions; the Employer's argument affirms the consequent. The contract spells out what must happen in cases where an employee is disciplined—but this does not prevent the Employer from notifying the Union when non-disciplinary coachings are issued, or from counseling employees without disciplining them. The collective bargaining agreement outlines a procedure for documented verbal counselings that are disciplinary. It does not prohibit notifying the Union about counselings even where no discipline is issued.

Furthermore, the Employer did not forward copies of the one alleged disciplinary action at issue to the Union. Assuming that the Employer was following the collective bargaining agreement, this supports the conclusion that this particular Employer coaching, along with the other coachings, was not a disciplinary action. The Employer also provided a grievance response demonstrating that coachings following "IDrive event notifications"[3] were not disciplinary actions. There is no substantive difference between the IDrive-related coachings from the other coachings entered into the record. This also suggests that the coachings entered into the record are not disciplinary.

Accordingly, the Employer has not met its burden of showing by a preponderance of the evidence that road supervisors issue discipline when they counsel employees.

b. Road Supervisors' Role In Investigating Accidents Requires Little Independent Judgment And Is Not Carried Out As Part Of A Labor-Relations, Disciplinary Process

The Employer also suggests that road supervisors are statutory supervisors because they exercise independent judgment when investigating incidents, including when deciding to temporarily remove a driver from service. The Employer contended during oral argument that road supervisors could use independent judgment when sending an employee for drug and alcohol testing.

Contrary to the Employer's claim in its oral argument, the Post-Accident Testing Determination report forms entered into evidence show that road supervisors do not exercise independent judgment, but must follow certain prescribed protocols, and may only send an employee for drug and alcohol tests in specified circumstances.

While sending an employee home for fatigue or sending an employee to take a drug test may impact the employee's terms and conditions of employment, the record established the decision to take such actions was routine. See, e.g., *Veolia Transportation Servs.*, 363 NLRB No. 188 (May 12, 2016)("In any event, for 'reasonable suspicion' situations, Road Supervisors do not determine if an operator is actually impaired or otherwise accuse the operator of wrongdoing, and although an operator is administratively suspended until test results return, if the test comes back negative the operator is paid for the time he or she was suspended.").

[3] A notification of an incident based on the automated video camera system installed on the Employer's vehicle fleet.

Regarding post-accident investigations, it is important to note that the Employer's interest and the drivers' interests are not necessarily at odds. The Employer must document the accident and it behooves the Employer to find that its own driver *was not* at fault. Thus, drivers do not request *Weingarten* representatives when being questioned by the road supervisors. These investigations, which are used for external purposes, are thus different than the more typical investigation into potential employee misconduct or negligence which is used primarily for internal use and in the context of whether to issue discipline.

Therefore, even though road supervisors may conduct investigations and send employees home, this does not make them statutory supervisors.

c. Secondary Indicia Do Not Show Road Supervisors Are Statutory Supervisors

The Employer also raises several secondary indicia of supervisory status, including the job title, job description, and ratio of managers to unit employees to support its position.

The Employer argues that the title "road supervisor," along with a job description giving road supervisors supervisory authority shows that road supervisors are statutory supervisors. This is not the case. An individual's actual responsibilities, and not mere paper authority like job titles or descriptions, determines supervisory status. See *Lucky Cab Co.*, 360 NLRB 271, 272 (2014), citing *Schnurmacher Nursing Home v. NLRB*, 214 F.3d 260, 265 (2d Cir. 2000), enfd. in relevant part 327 NLRB 253 (1998). While road supervisors are called "supervisors," and their job description says that they supervise direct reports by "conducting annual performance reviews, issuing disciplines, and providing daily oversight of assigned tasks," this does not show that road supervisors are supervisors under the Act unless these things are actually done.

Perhaps the strongest secondary indicium of supervisory status is the ratio of managers to unit employees. While it is true that there are only a handful of managers to supervise a multitude of drivers, secondary indicia of supervisory status cannot show supervisory status on their own, but reinforce a finding of supervisory status due to the statutory criteria. Therefore, this secondary indicator cannot support a finding of supervisory status.

Because road supervisors do not perform any of the statutory primary indicator tasks mentioned in Section 2(11) using independent judgment, and because secondary indicia can only support a finding of supervisory status made due to a primary indicator, road supervisors are not statutory supervisors.

2. Road Supervisors Are Not Confidential Employees

The Employer then argues that Road Supervisors should be excluded from the voting unit as confidential employees. While the Employer did not discuss this point at length in its closing argument, it briefly mentioned at hearing that road supervisors have access to employee documents and areas of the facility where confidential documents are kept.

This evidence is not enough to show that road supervisors are confidential employees. The Employer has not claimed that road supervisors act in a confidential capacity to managers. Even under the *Crest Mark Packing* test, where simply having regular access to confidential information concerning anticipated changes that may result from collective bargaining negotiations determines confidential status, the Employer has not shown that road supervisors have the requisite access to such information. Employee records and personnel files are not the information required by *Crest Mark Packing*.

Therefore, road supervisors are not confidential employees.

3. Road Supervisors Share A Community of Interest with The Existing Bargaining Unit

Road supervisors share a community of interest with the existing bargaining unit employees, and they may be included as a part of it. The weight of factors in the Board's traditional community of interest determinations, as described in *PCC Structurals*, lead to this conclusion. The line of job progression and promotion (with drivers becoming road supervisors and vice versa), similarities in wages, and integration and contact with other unit employees suggest that inclusion within the existing unit would be appropriate.

Road supervisors work closely with drivers who are in the existing bargaining unit. Their pay and benefits are similar to drivers, and they work from the same location (South Base) as drivers do. Furthermore, they share common management and supervision with the drivers. Finally, the testimony at hearing established that road supervisors were former drivers, and some road supervisors have transitioned back into driver positions.

These factors support concluding that road supervisors may be appropriately included in the same unit as drivers, with whom they share a community of interest. There is no evidence showing that employees who would not be included in this proposed unit would share meaningfully distinct interests in collective bargaining that would outweigh similarities with unit members.

Finally, the Board's decisions have not set out industry-specific guidelines that would prohibit including road supervisors in the existing unit. To the contrary, where the Board law has addressed such issues, it has generally found that road supervisors are appropriately included, see *Veolia Transportation Services*, 363 NLRB 98 (2016); *First Transit*, unpublished decision dated January 27, 2016, adopting the Regional Director's Decision in Case 21-RC-147424 (2016 WL 337236).

Therefore, because road supervisors are not statutory supervisors or confidential employees, and may be included in the existing unit, they should be allowed to vote on whether they wish to be included in the existing unit for the purpose of collective bargaining.

B. Shop Foremen

Two employees work as shop foremen at South Base. The Employer contends that these two employees are statutory 2(11) supervisors, confidential employees,[4] and do not share a community of interest with the existing unit employees. I find that the Employer has not met its burden with respect to any of these arguments. Therefore, shop foremen will be allowed to vote to determine whether they wish to be included in the existing bargaining unit for the purpose of collective bargaining.

1. Shop Foremen Are Not Statutory Supervisors

The Employer contends that shop foremen should be considered supervisors because, like the dispatchers in *Entergy Mississippi, Inc*, 367 NLRB No. 109 (2019), they use independent judgment when making work assignments. The Employer also claims that the shop foremen have the authority to issue discipline. Finally, the Employer points out that shop foremen are often responsible for looking after the shop when there is no manager present, acting as the highest level of authority in the department.

The Employer's claims are unpersuasive. Isolated, infrequent, or sporadic exercise of supervisory authority will not confer supervisory status. Nor will work leads exercise independent judgment if they assign work based on well-known employee skills, or if work assignments are made only to equalize workload, or only with respect to whether an employee is capable of doing a job, or if supported only by vague testimony that assignments are made by playing to employee strengths.

I also find that the Employer's claim that shop foremen can discipline other employees is supported only by paper authority that cannot support finding supervisory status. Finally, even if shop foremen were the highest level of authority present in the shop department at some times, this is a secondary indicator of supervisory status that cannot on its own support finding that shop foremen are supervisors.

a. Shop Foremen Do Not Assign Work Using Independent Judgment

While using independent judgment when assigning work, or times and places work should be performed, will confer supervisory status, the testimony and evidence does not show that shop foremen exercise independent judgment.

"Assignment is 'the act of designating an employee to a place,' 'appointing an employee to a time,' or 'giving significant overall duties' to an employee." *Entergy Mississippi*, 367 NLRB No. 109, slip op. at 3, quoting *Oakwood Healthcare*, 348 NLRB 686, 689 (2006). This authority must be exercised according to independent judgment. Id. However, judgment dictated or controlled by detailed instructions is not independent. Id. And independent judgment is not used,

[4] The Employer did not produce any evidence or make any argument supporting this claim made in their statement of position. Therefore, I do not find that shop foremen are confidential employees.

as noted above, when making assignments based on well-known employee skills or routine procedures.

Here, the Employer has not shown that work assignments made by shop foremen were made using independent judgment. The record shows that individual shop employees decide which tasks they will be performing next from those available in the computer job database named Spear asset management system. These tasks, or work orders, are not put into the system by shop foremen; instead, these available tasks appear automatically, or can be entered by some individual technicians. While a shop foreman can assign these tasks to an individual technician, this is often done at the request of the technician who created the work order for these tasks.

While the record showed that shop foremen have sometimes assigned outstanding tasks based on well-known employee skills, this is not an exercise of independent judgment. See, e.g., *Shaw, Inc.*, 350 NLRB 354, 355 (2007). The record also showed that shop foremen often followed the requests of individual technicians. The record does not show that shop foremen assign tasks on independent judgment, if they even have primary responsibility for assigning tasks to other shop employees at all.

In *Entergy Mississippi*—cited by the Employer to support its position that shop foremen are statutory supervisors—dispatchers were found to be statutory supervisors because they used independent judgment in prioritizing tasks to be addressed, determining how many employees were to be assigned to a given task, deciding when to address certain tasks, and reassigning, holding over, or summoning employees when needed. In the case at hand, shop foremen do not prioritize tasks, determine how many employees will be assigned, decide when they will be addressed, or alter the schedules of other employees if the situation warrants. While shop foremen may decide to lend a hand and help other employees, this is not assigning an employee a task exercising independent judgment so much as taking the initiative to help when needed. Nor is routinely ratifying employee requests to be assigned to certain jobs a supervisory function so much as it is a clerical function.

The record does not show that shop foremen exercise independent judgment when assigning work. The Employer has not met its burden of showing that shop foremen are supervisors on this ground.

b. Shop Foremen Do Not Issue Discipline

The Employer also argues that shop foremen are statutory supervisors on the grounds that they have the authority to issue discipline. The Employer's only evidence for this is the job description for shop foremen. When asked about specific points in this job description, one of the foremen that testified denied having ever coached, mentored, conducted annual performance reviews, or issued discipline to employees.

The Employer avers that this is so because no shop foreman has ever needed to exercise this authority. However, given the large number of supervisory duties that the shop foremen have never performed, the disconnect between the paper authority and the reality of the job is too much. The Employer has produced only paper evidence to support this contention, which is insufficient

to meet their burden. See, e.g., *Loyalhanna Health Care*., 352 NLRB 863 (2008). I find the Employer's invitation to speculate that shop foremen could have disciplined employees if they had the opportunity to do so to be just that—speculation. And speculation will not support finding an employee to be a statutory supervisor.[5]

Therefore, I find that the record does not support a conclusion that shop foremen are statutory supervisors because they have the power to discipline employees.

Finally, the Employer contends that shop foremen are statutory supervisors because they are sometimes the highest level of authority present in the department. However, even if the record supported this argument, this would be a secondary indicator of supervisory authority. Finding supervisory status requires at least one primary indicator of supervisory status, which the Employer has not shown. Therefore, since I cannot find that shop foremen are statutory supervisors based on this secondary indicator of supervisory status, I must conclude that the Employer's evidence fails to show that shop foremen are statutory supervisors.

Therefore, since the Employer has not shown that shop foremen use independent judgment to assign work or discipline employees, and the Employer has not shown that shop foremen exercise any of the other statutory indicators of supervisory status, I conclude that shop foremen are not statutory supervisors.

2. Shop Foremen Share A Community Of Interest With The Existing Unit

Finally, it would be inappropriate to exclude shop foremen from the existing unit. Shop foremen "have a high degree of functional integration" with the other shop employees in the existing unit. *Boeing Co.*, 368 NLRB No. 67, slip op. at 5 (2019). As the Board noted, "it is 'particularly inappropriate to carve out a disproportionately small portion of a large, functionally integrated facility.'" Id., quoting *Publix Super Markets*, 343 NLRB 1023, 1027 (2013).

The record shows that shop foremen and the other employees in the existing bargaining unit work closely with one another in carrying out their common tasks. The shop foremen, among other things, perform a clerical role in entering and routinely approving tasks that technicians and other employees request to work on; perform a quality control function in checking work performed, as required by CapMetro; and will sometimes help other technicians, or perform tasks themselves. These facts indicate that shop foremen are part of a functional integrated facility, and should not be carved out of inclusion within the existing unit.

Besides functional integration, however, I find that shop foremen share common supervision with other maintenance employees, who are already part of the existing unit. I also find that shop foremen have frequent contact and interaction with other maintenance employees, and have similar pay and benefits to other employees who are included in the existing unit.

Therefore, considering these traditional community of interest factors, I find that it would be appropriate to include shop foremen within the existing unit. Thus, I find that shop foremen

[5] I also do not find the quality control function shop foremen perform to be discipline, as leadmen may inspect and report the work of others without being statutory supervisors. See *Brown & Root, Inc*, 314 NLRB 19, 21 fn. 6 (1994).

are neither statutory supervisors nor confidential employees. I also find that it would be appropriate to include them in the existing unit. Therefore, they should be allowed to vote on whether they wish to be included in the existing unit for the purpose of collective bargaining.

C. Facilities Foreman

One employee works as the facilities foreman[6] at South Base. The facilities foreman works with one other employee in facilities maintenance, the facilities maintenance technician. The Employer argues that the facilities maintenance foreman is a 2(11) supervisor, a manager, and does not share a community of interest with the existing unit. I find that, as with road supervisors and shop foremen, the Employer does not satisfy its burden. Therefore, the facilities foreman should be allowed to vote on whether to be represented within the existing unit.

1. The Facilities Foreman Is Not A Statutory Supervisor

As with the shop foremen, the Employer argues, relying on *Entergy Mississippi*, that the facilities foreman uses independent judgment to assign work to the facilities technician. As with the shop foremen, the record does not support this argument.

The facilities foreman does not use independent judgment or evaluate data to decide what work orders are needed. Instead, these work orders are created either by CapMetro, or at the direction of another employee, including the facilities technician. This is a primarily administrative or clerical, rather than supervisory, function.

While most of these work orders are completed by the facilities technician, the facilities foreman performs some work orders, and assists the facilities technician with others. Sometimes, the facilities technician asks the facilities foreman to help with a job, and vice versa. Unlike the Employer, I find that any requests for assistance or assignment of work are routine, isolated, not based on independent judgment, and insufficient to establish supervisory status.

The record establishes that the facilities technician usually sets his own schedule and chooses which tasks to prioritize, including when to ask the facilities foreman for assistance. While the facilities foreman is able to choose some tasks from those available to do himself, and may request assistance from the facilities technician, choosing tasks from a list and deciding whether to occasionally request help is not analogous to how the dispatchers in *Entergy Mississippi*, 367 NLRB 109 (2019) used data and independent judgment when evaluating power outages and deciding how and when other employees should handle them.

Instead, I find that the facilities foreman acts as a leadman rather than a supervisor within the meaning of the Act. The "directions and work assignments they give to other crewmembers…do not involve the use of independent judgment but are…of a routine nature". *John Cuneo of Oklahoma, Inc.*, 238 NLRB 1438, 1439 (1978), enfd. 106 LRRM 3077 (10th Cir. 1980). Importantly, this "minimal authority" to request or assign work is no greater than that of the facilities technician to assign his own work and request the facilities foreman to assist in

[6] During the hearing, the facilities foreman was at times referred to as the "facilities maintenance foreman."

carrying it out. See *Heritage Fire Protection, Inc.*, 307 NLRB 824, 828 (1992), citing *John Cuneo of Oklahoma*, 238 NLRB at 1439.

Because the facilities foreman does not exercise independent judgment in assigning work, but instead possesses only minimal authority to do so, and the Employer has not shown the facilities foreman exercises any of the other statutory indicators of supervisory status, I find that the facilities foreman is not a statutory supervisor.

2. The Facilities Foreman Is Not A Manager

The Employer argues that the facilities foreman is a manager because he spends 90 percent of his time on project management, client communications, financial and budget work, and performing quality assurance. The facilities foreman also has the authority to make purchases up to $1,000. These tasks, according to the Employer, are primarily administrative and managerial.

Many of these tasks—especially those relating to communications, quality assurance, and other administrative matters—are not formulating and carrying out high-level employer policies, or exercises of discretion independent of the employer's established policy. See *Republican Co.*, 361 NLRB 93, 95-96 (2014).

However, the facilities foreman is allowed to make purchases up to $1,000 as he sees necessary for the department without approval from higher management. This is an exercise of discretion, but at a lower level and within an established policy of the Employer—that such purchases be limited to $1,000. Furthermore, the Board has not found employees to be managers in the past who were also able to make purchases without supervisor approval. See *John Cuneo of Oklahoma*, 238 NLRB at 1439 (foremen were able to purchase up to $500 in supplies without supervisor approval).[7]

Because the facilities foreman either does not exercise discretion on behalf of the Employer, or does so within established policies and at low levels, I find that the facilities foreman is not a managerial employee.

3. The Facilities Foreman Shares A Community Of Interest With The Existing Unit

The Employer contends that the facilities foreman does not share a community of interest with the existing unit, since he performs much of his work in an office shared with other foremen and management, wears different clothes while working, and usually performs more clerical or administrative work than the facilities technician.

I am not persuaded by these arguments. Instead, I note that the facilities foreman works closely with the facilities technician, performing clerical tasks at the technician's request—and sometimes performing the same maintenance tasks alongside the technician. I also find that the facilities foreman and facilities technician share common supervision, as both report to the Fleet and Facilities Maintenance Manager. Finally, I find that the facilities foreman and facilities

[7] Adjusted for inflation, according to the Bureau of Labor Statistics' Consumer Price Index Inflation Calculator, $500 in September 1979 would have been equivalent to $1,718.46 in May 2020.

technician are part of a functionally integrated unit, relying on one another in order to complete their daily tasks. See *Keller Crescent Co., Inc.*, 326 NLRB 1158, 1159 (1998) (quality assurance monitors included in production and maintenance unit because of, among other reasons, functional integration, vital role of quality control in production process, and regular daily contact with production employees). Therefore, it would be inappropriate to exclude the facilities foreman from the existing unit.

The facilities foreman is neither a statutory supervisor nor a manager, and should not be excluded from the voting unit. Therefore, the facilities foreman will be allowed to vote on whether to be included in the existing unit for the purpose of collective bargaining.

D. Resolution Specialist

One employee works as a resolution specialist at South Base. The Employer argues that resolution specialists are confidential employees; office clerical employees specifically excluded from the existing unit; and do not share a community of interest with the existing unit.

The record shows that, while the resolution specialist is not a confidential employee, the resolution specialist is an office clerical employee who does not share a community of interest with the existing unit. Therefore, the resolution specialist is not eligible to vote on whether to be included in the existing unit.

1. The Resolution Specialist Is Not A Confidential Employee

The Employer argues that the resolution specialist is a confidential employee. While the resolution specialist has access to information that could potentially lead to employee discipline, and does make recommendations to management, which are not routinely followed, that some drivers receive additional training, the resolution specialist does not assist or act in a confidential capacity to managers, nor does she have access to potential changes in collective bargaining negotiations.

The information the resolution specialist has access to plays no role in assisting management in a confidential capacity or in collective bargaining. Therefore, under either test for confidential employee status, the resolution specialist is not a confidential employee.

2. The Resolution Specialist Is An Office Clerical Employee And Does Not Share A Community of Interest With The Existing Unit

The resolution specialist is an office clerical employee. Unlike plant clerical employees, office clerical employees are traditionally excluded from production (or transportation) and maintenance units on community of interest grounds. While the unit description in the collective bargaining agreement explicitly excludes office clerical employees, this bargaining history does not itself require excluding office clerical employees. However, the lack of community of interest between office clerical employees, including the resolution specialist, and the existing unit requires the resolution specialist to be excluded.

Article 1B of the collective bargaining agreement between the Employer and the Union describes the existing transportation and maintenance unit. According to this section, the bargaining unit "does not include any office clerical employees."

Even if a collective bargaining agreement specifically excludes a category of employees from a bargaining unit, however, this specific exclusion does not necessarily mean that those excluded employees cannot later be accepted into the unit. *UMass Memorial Medical Center*, 349 NLRB 369, 370 (2007); *Centerpoint Energy Houston Electric, LLC*, 368 NLRB No. 109 (2019). Instead, an explicit contractual promise not to seek to represent these excluded employees is needed for the contract to permanently bar their inclusion. Id.

Here, Article 1B only says that the unit of transportation and maintenance employees does not include any office clerical employees. This statement is not an explicit contractual promise by the Union not to represent office clerical employees. Therefore, the language of the contract does not prohibit including office clerical employees in the existing unit.

However, what the language of the contract might allow, the Board's community of interest analysis does not. Plant clerical employees are typically included in production (or transportation) and maintenance units because the share a community of interest with the employees in the unit. See, e.g., *Centerpoint Houston*, 368 NLRB No. 109; *Kroger Co.*, 342 NLRB 202 (2004); *Brown & Root, Inc.*, 314 NLRB 19, 23 (1994); *Armour & Co.*, 119 NLRB 623, 625 (1958). Office clerical employees, on the other hand, are excluded from these units in all but the most unusual of circumstances. See, e.g., *PECO Energy Co.*, 322 NLRB 1074, 1084-1085 (1997); *Westinghouse Electric Corp.*, 118 NLRB 1043, 1047 (1957).

While the distinction between office and plant clerical employees is not always clear, *Hamilton Halter Co.*, 270 NLRB 331 (1984), the general distinction is one between the production process (for plant clericals) and general office operations (office clericals). Compare, e.g., *Caesars Tahoe*, 337 NLRB 1096—1099 (2002) (plant clerical duties included dispatching, payroll, and note taking); *Hamilton Halter*, 270 NLRB 331 (1984) (typical plant clerical duties are timecard collection, transcription of sales orders to forms to facilitate production, maintenance of inventories, and ordering supplies), with *PECO Energy Co*, 322 NLRB 1074, 1084—1085 (office clerical employees generated reports, tracked data, typed, filed, and entered data); *Dunham's Athleisure Corp.*, 311 NLRB 175, 176 (1993) (typical office clerical duties include billing, payroll activities in the office area, telephone, and mail).

The resolution specialist's duties are those of an office clerical employee. The resolution specialist's usual work is handling customer service calls, complaints, and concerns. While the resolution specialist has some limited interaction with drivers and road supervisors, the resolution specialist essentially serves in a customer service role. Where customer service personnel do not routinely interact with, and work in a different environment than, other unit employees, the Board has found that customer service clerks are office clerical employees. See, e.g., *Weldun International, Inc.*, 321 NLRB 733, 735 (1996), enfd. in relevant part *NLRB v. Weldun International*, 165 F.3d 28 (6th Cir. 1998); *Nuturn Corp.*, 235 NLRB 1139, 1140 (1978).

Furthermore, I find that the resolution specialist's work is not functionally integrated with that of the existing unit. The resolution specialist's customer service work is not part of the day-to-day operations of the transportation and maintenance unit. Instead, the resolution specialist's job is to communicate customer feedback to managers and individual drivers in the existing unit. As mentioned, the resolution specialist's interactions with the existing unit are not routine and bilateral, as would be expected in a functionally integrated setting. Instead, the resolution specialist's working interactions with existing unit members are limited to placing letters in mailboxes and occasional requests to discuss one of these letters. This does not demonstrate the sort of close interaction found in functionally integrated settings.

Finally, the bargaining history in the record indicates that office clerical employees, like the resolution specialist, have been excluded from the existing unit. In determining appropriate bargaining units, the Board has also long given substantial weight to prior bargaining history. *Boeing Co.*, 368 NLRB No. 67 at (2019).

Evaluating these factors in light of *Boeing*, I find that the weight of the evidence establishes that the resolution specialist is an office clerical employee whose inclusion in the existing unit would be inappropriate, because the resolution specialist does not share a community of interest with the existing unit. At Step 1, I find that, following the *PCC Structurals* factors, the resolution specialist does not share a community of interest with the existing transportation and maintenance unit. Leaving Step 2 aside, I also find, at Step 3, that the traditional exclusion of office clerical employees from production and maintenance units dictates their exclusion from this analogous transportation and maintenance unit. Since the resolution specialist is an office clerical employee, the Step 3 analysis confirms that the resolution specialist should not be included in the existing unit.

I also find that the "residual exception" does not apply here. That is, this is not one of the rare cases where excluding an employee from voting in this election would leave the resolution specialist the only unrepresented person at a facility, effectively denying "the opportunity to be represented in collective bargaining." *Victor Industries Corp. of California*, 215 NLRB 48, 49 (1974). If the resolution specialist were the only unrepresented employee at North Base, then excluding the resolution specialist from the voting unit would effectively create a single-person residual unit inappropriate for collective bargaining, barring her Section 7 right to representation. *Klochko Equipment Rental Co., Inc.*, 361 NLRB No. 49 at 1, fn 1 (2014), citing *Vecellio & Grogan*, 231 NLRB 136, 136-137 (1977); *Victor Industries* 215 NLRB at 49.

In this case, there are other unrepresented employees with whom the resolution specialist could exercise her Section 7 right to representation. Therefore, since excluding the resolution specialist from the voting unit would not exclude her from any possible unit in which she might be represented, the residual exception is not implicated. The exclusion of the resolution specialist is therefore proper and does not deny employees the right to be represented.

Therefore, the resolution specialist will not be allowed to vote on whether to be included in the existing unit for the purpose of collective bargaining.

V. CONCLUSION

The evidence does not show that road supervisors, shop foremen, or the facilities foremen are statutory supervisors, confidential employees, or managers. Furthermore, the record shows that these three classifications share a community of interest with the existing transportation and maintenance unit, and should be allowed to vote in a self-determination election on whether they wish to be included in it for the purposes of collective bargaining.

However, the preponderance of the evidence shows that the resolution specialist is an office clerical employee who does not share a community of interest with the existing unit. Therefore, the resolution specialist will not be included in the voting unit.

Based upon the entire record, and as discussed above, I find that:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner is a labor organization which claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> **INCLUDED:** All road supervisors, shop foremen, and facilities foremen who are employed at the Employer's facility located at 509 Thompson Lane in Austin, Texas.
>
> **EXCLUDED:** All other employees, office clerical employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by the **Amalgamated Transit Union, Local Union 1091** as part of the existing unit of transportation and maintenance employees represented by the Amalgamated Transit Union, Local Union 1091 at the Employer's 509 Thompson Lane facility located in Austin, Texas.

A. Election Details

The election will be conducted by mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 16 on Monday, August 3, 2020. Voters must return their mail ballots so that they will be received in the Region 16 office by 4:45 p.m. on Monday, August 24, 2020. The mail ballots will be counted on Thursday, August 27, 2020 at 2:00 p.m. at a location to be determined, either in person or by videoconference, after consultation with the parties, provided the count can be safely conducted on that date.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region 16 office by no later than 4:45 p.m. on Monday, August 10, 2020, in order to arrange for another mail ballot kit to be sent to that voter.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending July 4, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by July 23, 2020. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

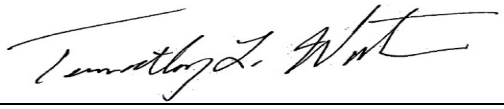
Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded

from filing a request for review of this Decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

DATED at Fort Worth, Texas, this 21st day of July 2020.



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